The Planning Inspectorate

Appeal Decision

Site visit made on 14 September 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/J2285/W/20/3259455
The George and Dragon, London Road, Swanscombe DA10 0LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Abdul Mumtaz (Zaan Limited) against the decision of Ebbsfleet Development Corporation.
- The application Ref EDC/19/0203, dated 27 November 2019, was refused by notice dated 15 June 2020.
- The development proposed is change of use from Public House (Use Class A4) to Pizza Delivery and Takeaway (Use Class A5) and installation of ancillary equipment including extraction duct.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development shown on the appeal form is different to that on the application form. As such, and because the Development Corporation took account of the updated version in reaching its decision, the above heading reflects the most recent description.

3. The site lies within the Borough of Dartford and, therefore, the development plan comprises the adopted Dartford Core Strategy 2011 and the Dartford Development Policies Plan 2017. I have had regard to the representations of Dartford Borough Council as the plan-making authority. I note that the site lies within the Swanscombe Peninsula Major Development Site as identified in the Ebbsfleet Implementation Framework.

4. A revised version of the National Planning Policy Framework (the Framework) was issued in July 2021. The parties were given the opportunity to comment on any implications with regard to the current appeal and I have had regard to the comments made.

5. Changes to the Use Classes Order since the application was made mean that both the existing use (formerly A4) and proposed use (formerly A5) are both now *sui generis* uses[1].

[1] The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amend the Town and Country Planning (Use Classes) Order 1987 and came into force on 1 September 2020.

Main Issues

6. The main issues are:
   - the effect of the proposal on the availability of community facilities;
   - having regard to national and local policies, whether the appeal site would be an appropriate location for the proposed use; and
   - whether adequate on-site parking would be provided and related to this, the effect on highway safety and nearby residents' living conditions, with regard to noise and disturbance.

Reasons

Availability of Community Facilities

7. The supporting text to Policy DP21 of the Dartford Development Policies Plan 2017 (DPP) says community facilities include facilities often valued by the community, such as public houses and post offices that are well-established within the locality where there is a reasonable possibility of the building being reused to provide community services. For a change of use to a non-community use as proposed here to be permitted, the policy requires clear evidence that the facility is shown to be not needed by the community; and that all reasonable efforts have been made to preserve a community use.

8. The Framework says that planning policies and decisions should plan positively for the provision and use of shared spaces and community facilities, such as public houses amongst other uses; and should guard against the unnecessary loss of valued facilities and services[2]. With regard to evidence of whether the facility is needed or not by the community, the supporting text to Policy DP21 says that planning decisions will reflect evidence of need/demand for facilities, including consideration of the size, range and quality of existing facilities.

9. The proposal attracted a large number of representations from interested parties, many of them local residents. As the appellant contends, the majority of these object to the proposed takeaway for a range of reasons. However, a substantive proportion also refer to the public house being well-established, raise objections to its loss and/or state that the building should continue to be used for a community purpose. Some also refer to the loss of other public houses within Swanscombe. The appellant refers to three alternative public houses, which serve the local catchment. However, the only specific example given is the Wheatsheaf, which is on the High Street some 750 metres from the appeal site. This is temporarily closed according to the appellant, but recently at the time of the inspection I observed that the building is boarded up, falling into some disrepair and shows no apparent signs of re-opening. The Development Corporation refers to the loss of three named public houses in the last ten years.

10. While there have been no apparent approaches for the building to be listed as an Asset of Community Value, neither Policy DP21 nor the Framework make this a specific requirement when considering the potential loss of well-established and valued facilities. Therefore, based on the available evidence, particularly the views of interested parties and the apparent lack of existing public houses,

[2] Paragraph 93.

it is not possible to conclude that there is clear evidence that the facility has been shown to be not needed by the community.

11. Turning to the requirement in Policy DP21 that all reasonable efforts have been made to preserve a community use, the principal evidence provided by the appellant relates to commercial marketing of the property. The glossary to the DPP defines effective marketing, including the appropriate period and approach.

12. The appellant indicates that the property was marketed initially for nine months and also following the determination of the application, giving a total of 12 months, which accords with the optimum period in the glossary. In response to the Development Corporation's concerns, the marketing was undertaken by a professional agent and the correspondence provided demonstrates 'an appropriate range of online, on site and other advertising media', as required. The fact that this was proactive is demonstrated by reference to regular e-marketing campaigns sent to registered buyers.

13. With regard to comparisons of marketing of the Alma public house by the same agent, from the available information I have no basis to question the marketing approach, including the price sought, by a reputable agent based on professional judgement and experience. I give some weight to the fact that the marketing took place during a period of economic uncertainty created by the Covid-19 pandemic. Nonetheless, it remains the case that the marketing resulted in no direct commercial offers related to reuse of the building as a public house or for another community use. For the purposes of this appeal, I give little weight to its potential reuse related to the London Resort given that I have no evidence about the nature, extent of or timescale for this project.

14. As well as this commercial approach to preserving a community use, Policy DP21 expects, where applicable, exploration of appropriate community based solutions, such as potential for listing as an Asset of Community Value and the potential for the community to actively manage and maintain the facility/land. However, I am not aware that any such exploration has been undertaken by the appellant in circumstances where it has been found that there is not clear evidence that the facility has been shown to be not needed by the community. This is notwithstanding the fact that there have been no apparent approaches for the building to be listed as an Asset of Community Value. I agree in this regard with the Development Corporation that to satisfy the requirement in the policy there should be some evidence of proactive approaches made to relevant public bodies, community groups or other relevant organisations to explore the possibility of an ongoing community use of the building. Consequently, the proposal fails to comply with the policy in this respect as there is insufficient evidence that alternative solutions have been explored fully.

15. While I accept that the proposed use would result in job creation through the building's reuse, this is not a sufficient basis to overcome the conflict with Policy DP21. Nor can it be said with any certainty that vacancy rates in commercial properties will increase due to the Covid-19 pandemic. Temporary permitted development rights for public houses to provide takeaway food have been extended to March 2022 and I accept that the building could be used for this purpose in the short term. However, the proposal is for a permanent change of use with longer term implications as found above. I give little weight to arguments concerning more general flexibility in changes of use resulting from

recent legislative changes, given that this appeal involves a specific proposal; or that takeaways provide a particular community service related to social distancing, as circumstances have changed since the appeal was made.

16. Accordingly, for the reasons given above, I conclude that the proposal would result in the unjustified loss of a community facility for a non-community purpose, contrary to Policy DP21 of the DPP.

Whether the Appeal Site would be an Appropriate Location

17. The appeal site is some 300 metres from Swanscombe District Centre and, therefore, is an edge of centre location. As such, Policy DP14 of the DPP requires that the sequential test should be met to demonstrate that there is not a sequentially preferable location within a designated centre. This policy is consistent with the approach to ensuring the vitality of town centres set out in section 7 of the Framework.

18. Policy DP19 also of the DPP more specifically says that takeaways will normally be permitted only within the development plan's network of designated centres. This policy is principally concerned with possible detrimental effects of such uses with regard to residential amenity, traffic and parking. These matters are addressed separately under the third main issue below.

19. The appellant contends that the need for the proposed use should not have been raised by the Development Corporation as this is a commercial matter. I note, however, that this matter was not included in the reasons for refusal, unlike in the appeal decision drawn to my attention[3].

20. A sequential sites assessment was undertaken by the appellant, which concludes that there is only one alternative site available within a designated centre, but that this does not meet the requirements for the proposed use. I note the Development Corporation's comments on the approach taken to the sequential test, particularly that the site search does not cover a wide enough catchment and that the applicant did not discuss the potential suitability of alternative sites, as recommended in the national Planning Practice Guidance (PPG)[4].

21. I have also had regard to the appeal decision drawn to my attention by the appellant concerning a proposed change of use from an A4 to A5 use, as in this case[5]. In that decision the Inspector concluded that the proposal would not result in the introduction of a town centre use on a site where no such use exists at present. Rather, it would result in the substitution of one town centre use for another, within an existing building and with no increase in floorspace, both of which involved the sale of food and drink. In such circumstances, the Inspector concluded that the results of the sequential test are not determinative and that the proposal would not necessarily compromise or undermine the vitality of a town or district centre.

22. I am mindful of the principle that appeal decisions should be determined on a consistent basis as well as on their own merits. It appears that the circumstances in the earlier appeal and the one before me are effectively the

[3] APP/J1535/W/17/3175558 dated 26 September 2017.
[4] *Town Centres and Retail*, 011 Reference ID: 2b-011-20190722
[5] APP/W3710/W/14/3000770 dated 18 March 2015.

same, with regard to both the current and proposed uses and the reuse of an existing building. While the relevant development plan policy in the earlier appeal is from a 2006 plan, it appears that its main purpose, to locate relevant uses in designated centres, is no different from the aim of the DPP policies referred to above. Moreover, while the decision dates from 2015, the overall approach to supporting the vitality of town centres in the Framework has not changed. Consequently, there is no reasonable basis for me to find differently to the Inspector in the earlier decision.

23. The Development Corporation contends that the location is not accessible to local residents. However, it is an edge of centre location relatively close to the High Street and surrounding residential areas. The pedestrian route and footway are readily useable as I observed at the inspection. In this regard, the PPG says that where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. I consider that these circumstances apply here.

24. Accordingly, for these reasons, I conclude that in the particular circumstances of this appeal the site would be an appropriate location as it would not compromise the vitality of a designated centre. Consequently, there is no conflict in this regard with Policies DP14 or DP19 of the DPP or the Framework, as described.

Parking, Highway Safety and Living Conditions

25. The Development Corporation's principal concern is that the appellant has not demonstrated that adequate on-site customer parking could be provided, with resultant adverse effects from off-site parking. In particular, the eight parking spaces proposed and lack of cycle parking would fail to meet the standards for a takeaway use required by both the Borough Council and Development Corporation.

26. Without any evidence to the contrary it is reasonable to assume that these parking standards relate to unrestricted A5 takeaway uses; the proposal applied for in this case, however, is a pizza delivery and takeaway. The appellant provides comparative evidence of the operation of a similar outlet by the same company elsewhere in Kent. This indicates that nearly 75% of trade is from deliveries rather than customer collection and I have no basis not to accept that a similar proportion of trade would be derived from deliveries in this case. While it is likely that most customer collections would occur by private vehicle, there is the opportunity for pedestrian and cycle access from the nearest residential areas in Swanscombe and there is an existing bus stop close to the site on the main road.

27. The appellant indicates that up to eight delivery drivers would be working during the evening peak period, undertaking multiple deliveries, with not all drivers on site at the same time. A robust assumption for parking by staff and delivery drivers at any one time is six spaces, leaving at least two of the eight for customers. Therefore, it is likely on the available evidence and the short-term nature of visits by both delivery drivers and customers, that spaces could be available as indicated in the appellant's assessment. However, without greater certainty about the likely number of trips from customer vehicles during

the evening peak there is no guarantee that off-site parking would not occur. Consequently, it is important to consider the possible effects.

28. Parking to the front of the site on London Road is likely to cause material harm to highway safety due to the proximity to the junction with the High Street and the restriction to the free flow of traffic. I accept that as the site frontage is located within the signal junction, parking in this location may be unlikely but, nonetheless, it could still occur. However, I note that a Traffic Regulation Order is proposed by the main parties to provide on-street parking controls and this could be required by condition. While the Development Corporation suggests that this might not mitigate the effects of parking, including through lack of enforcement, it is nonetheless suggested as conditional control on the proposed use. I have had regard to the appellant's concerns about the proposed condition, but for the above reasons I consider it is necessary and there is no basis to suggest that it would not be effective in its intended purpose.

29. The nearest residential properties that might be affected are on All Saints Close. However, based on the information provided, it is unlikely that any parking in this location would be of an extent or duration that it would result in material harm. Similarly, the extent of such parking and the opening times of the takeaway would not result in harmful disturbance to residents from undue levels of noise. With regard to use of the building itself and its car park, these are well-separated from the established residential properties opposite and the extent of vehicle use during opening hours would not lead to harmful noise or disturbance.

30. Access to the rear parking area would be from the High Street via a short strip of private land associated with the adjoining industrial area. As such, this is outside the red line area of the appeal site and not in the appellant's ownership. I note that the officer's report refers to the applicant confirming that 24 hour rights exist over this land. However, at that time no evidence was provided to substantiate this claim and I am not aware that any has been forthcoming as part of the appeal submissions. I have considered whether a condition could be imposed to require this area to be available for the intended use before it commences. However, in the absence of any evidence to confirm its availability, there is no clear prospect of this area being available within the time limit of a grant of permission, were I minded to allow the appeal[6]. Consequently, this must weigh against the proposal as in the absence of certainty about on-site parking arrangements there is more likely to be harm arising from parking in the surrounding area.

31. Accordingly, for all the reasons given above, I conclude that there is no certainty that adequate on-site parking can be provided or that this would not result in material harm resulting from parking in the surrounding area. As such, the proposal is contrary to Policy DP3 of the DPP, which requires suitable provision to minimise and manage transport impacts; and to Policies DP4, DP5 and DP19 of the DPP insofar as they relate to the adverse effects of traffic, access and parking.

[6] In accordance with PPG *Use of planning conditions* paragraph 009 Reference ID: 21a-009-20140306.

Other Matters

32. I have had regard to all the representations made by interested parties both opposed to and in support of the proposal. These do not, however, raise any additional matters in relation to the main issues that would lead me to reach a different overall conclusion.

Conclusion

33. I have found in the appellant's favour with regard to one main issue, concerning the location of the proposal. However, this is not sufficient to outweigh the fact that the proposal is contrary to the development plan as it would result in the unjustified loss of a community facility and there is no certainty that adequate on-site parking can be provided and that this would not result in material harm. There are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson
INSPECTOR